

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

EDGAR R. RIVERA DE JESUS, and)	
IDANIS I. GARCIA MORALES,)	Case No. 3:21-cv-51
)	
<i>Plaintiff,</i>)	Judge Travis R. McDonough
)	
v.)	Magistrate Judge Debra C. Poplin
)	
DLJ PROPERTIES, LLC, CHERYL)	
JONES, and ELIZABETH JONES,)	
)	
<i>Defendant.</i>		

ORDER

Before the Court is United States Magistrate Judge Debra C. Poplin’s Report and Recommendation (Doc. 53) on Plaintiffs’ motions for leave to proceed with an appeal in forma pauperis (Docs. 47, 49).

On November 2, 2022, Magistrate Judge Poplin filed a report recommending that Plaintiffs’ motions be denied. (Doc. 53, at 1.) Neither party filed objections to Magistrate Judge Poplin’s Report and Recommendation.¹ Nevertheless, the Court has reviewed the Report and Recommendation, as well as the record, and it agrees with Magistrate Judge Poplin’s well-reasoned conclusions.

¹ Magistrate Judge Poplin specifically advised that Plaintiffs had fourteen days to object to the Report and Recommendation and that failure to do so constituted a waiver of the right to appeal this Court’s order. (Doc. 53, at 5 n.2); *see* Fed. R. Civ. P. 72(b)(2); *see also* *Thomas v. Arn*, 474 U.S. 140, 148–51 (1985) (noting that “[i]t does not appear that Congress intended to require district court review of a magistrate’s factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings”). Even accounting for the three additional days for service as provided by Federal Rule of Civil Procedure 6(d), the period during which Plaintiff could timely file objections has now elapsed.

On February 16, 2021, Plaintiffs initiated this action by filing a complaint and an accompanying application for leave to proceed in forma pauperis. (Docs. 1, 2.) Magistrate Judge Poplin granted Plaintiffs' applications, but the Court ultimately dismissed Plaintiffs' claims. (Docs. 9, 12, 45, 46.) Shortly thereafter, Plaintiffs filed notices of appeal and the present motions to proceed in forma pauperis. (Docs. 47, 48, 49, 50.) The appeal notices do not specify the grounds for Plaintiffs' appeal and, in fact, appear to be on a state rather than federal form.² (Docs. 48, 50.)

In the report, Magistrate Judge Poplin measures Plaintiffs' actions against the "good-faith standard" supplied by Federal Rule 24(a)(3) of Appellate Procedure and 28 U.S.C. § 1915(a)(3). (*Id.* at 2.) According to the standard, "an appellant is required to show that the appeal presents a substantial question that is not frivolous." *Powell v. Alcoa High School*, No. 3:10-cv-212, 2010 WL 3087387, at *2 (E.D. Tenn. Aug. 5, 2010). To assist courts in determining whether an appeal presents a non-frivolous substantial question, Rule 24(a)(1) and 28 U.S.C. § 1915(a)(1) require parties to submit an affidavit stating the issues they anticipate presenting on appeal. *Id.* Because Plaintiffs have not supplied any detail as to what they intend to argue on appeal, "there is no way for this Court to exercise its judicial discretion to determine the meritorious character of the appeal. . . ." *Id.*

For this reason, the Court will **ACCEPT** and **ADOPT** Magistrate Judge Poplin's Report and Recommendations (Doc. 53). Accordingly, Plaintiffs' motions to proceed in forma pauperis (Docs. 47, 49) are hereby **DENIED**. Plaintiffs are permitted to file a motion to proceed in forma

² As Magistrate Judge Poplin points out, the certificate of service portion of the form refers to Rule 20 of the Tennessee Rules of Appellate Procedure. (Doc. 53, at 5 n.1; Doc. 48, at 2; Doc. 50, at 2.)

pauperis in the Sixth Circuit Court of Appeals within thirty (30) days of receiving this order and are advised that failure to do so, or, alternatively, failure to pay the requisite filing fee, will result in the appeals dismissal for want of prosecution. *See* Fed. R. App. P. 24(a)(5).

SO ORDERED.

/s/ Travis R. McDonough

**TRAVIS R. MCDONOUGH
UNITED STATES DISTRICT JUDGE**